

Certified Copy

In the Matter Of:

WELLS FARGO vs. NORTHERN ROCKIES

12-CV-221-J

JOHN SCHNEIDER, M.D.

August 13, 2013

Non-Confidential



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WELLS FARGO vs. NORTHERN ROCKIES

August 13, 2013

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

WELLS FARGO BANK, N.A.,)
a national bank,)
Plaintiff,)
vs.) Case No. 12-CV-221-J
NORTHERN ROCKIES NEURO-SPINE,)
P.C., a Wyoming corporation,)
JOHN H. SCHNEIDER, MICHELLE)
SCHNEIDER, SCHNEIDER LIMITED)
PARTNERSHIP, a Wyoming limited)
Partnership, JOHN SCHNEIDER)
REVOCABLE TRUST U/A/D)
NOVEMBER 20, 2007, MICHELLE)
SCHNEIDER REVOCABLE TRUST)
U/A/D NOVEMBER 20, 2007,)
SCHNEIDER MANAGEMENT, LLC,)
a Wyoming limited)
liability company,)
Defendants.)

NONCONFIDENTIAL TESTIMONY

DEPOSITION OF JOHN SCHNEIDER, M.D.
Taken in behalf of Plaintiff

9:25 a.m., Tuesday
August 13, 2013

PURSUANT TO NOTICE, the deposition of

21 JOHN SCHNEIDER, M.D., was taken in accordance with the
22 applicable Wyoming Rules of Civil Procedure at the
23 offices of Worrall and Greear, 1112 Robertson Avenue,
24 Worland, Wyoming, before Alexis Anderson, Court Reporter
25 and Notary Public of the State of Wyoming.



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1 A P P E A R A N C E S
 2

3 For the Plaintiff: JAMES R. BELCHER
 Belcher & Boomgaarden, LLP
 237 Storey Boulevard, Suite 110
 Cheyenne, Wyoming 82009

4
 5 For the Defendants: DAVID M. CLARK
 Worrall & Greear, PC
 6 1112 Robertson Avenue
 7 P.O. Box 552
 Worland, Wyoming 82401-0552

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1 myself. So please let me finish my questions before you
2 give your answers, and I'll try and let you finish your
3 answers before I ask another question. Okay.

4 A. Fair enough.

5 Q. First, I'd like to ask you about your
6 experience with Shoshone Bank in Cody, Wyoming, before
7 Wells Fargo acquired it. Do you recall having deposit
8 accounts at Shoshone Bank?

9 A. I do.

10 Q. Do you know approximately when?

11 A. 2005, I believe, 2006 prior to Wells Fargo
12 purchase of Shoshone Bank.

13 Q. Okay. Do you remember the nature of the
14 accounts, checking accounts, savings accounts,
15 certificates of deposit, things like that?

16 A. All of the above, plus corporate accounts.

17 Q. Do you recall having any personal loans with
18 Shoshone Bank?

19 A. I do.

20 Q. Can you give us a summary of those.

21 A. As I recall, loans were for land purchase and
22 home and ranch development in Powell, Wyoming.

23 Q. Do you recall having any business loans with
24 Shoshone Bank?

25 A. I do not.

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1 Q. Can you tell us the bank officers that you
2 dealt with at Shoshone Bank.

3 A. I believe at that time Glenn Ross was the vice
4 president of Shoshone Bank and dealt with him
5 specifically on my accounts, and I met the president, I
6 think Peterson was his last name, peripherally but
7 primarily Glenn Ross.

8 Q. Do you recall whether you guaranteed any loans
9 for businesses at Shoshone Bank?

10 A. I do not recall guaranteeing any loans for
11 businesses.

12 Q. Can you explain the approval process for
13 obtaining loans at Shoshone Bank to the best of your
14 recollection.

15 A. I believe it was based upon my assets and
16 specifically my income as to whether I would be able to
17 pay a loan back that I was requesting from a bank.

18 Q. Okay. Do you recall what approval process the
19 bank had internally to approve the loans once you applied
20 for them?

21 A. I don't.

22 Q. I'm going to ask you now a little bit about
23 Northern Rockies Neuro-Spine, and I may refer to it as
24 NRNS just because it might simplify things. Do you
25 recall the first loan that NRNS ever procured from Wells

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1 Fargo Bank?

2 A. I don't recall the first loan, if it was a
3 loan, other than for the building construction in
4 Billings.

5 Q. Help me understand that. My understanding is
6 what's been referred to in various papers as that being
7 the OMNI project; is that correct?

8 A. Correct.

9 Q. So did NRNS borrow money to be used for the
10 OMNI project?

11 A. Correct.

12 Q. Okay. Can you tell us what you recall about
13 that.

14 A. The specifics of the loan or the OMNI project?

15 Q. I'll try and clarify it a little better. I'm
16 not talking about what I'm going to refer to as the TI
17 loan for tenant improvement. Are we talking -- did NRNS
18 borrow money for a different purpose from Wells Fargo for
19 the OMNI project?

20 A. Well, NRNS is a signer on the overall building
21 development, more than just the TI loan that you refer.

22 Q. Okay. Isn't there a different entity that owns
23 the OMNI project?

24 A. You are correct.

25 Q. Okay. And is that entity that owns the OMNI



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1 project the borrower under the OMNI project loan?

2 A. The borrower on the overall OMNI project loan,
3 I believe, is different than the TI loan borrower.

4 Q. Okay. So with that background, do you recall
5 whether NRNS borrowed any money from Wells Fargo
6 specifically for the OMNI project construction?

7 A. I believe the answer is no.

8 Q. Okay. Can you describe the OMNI project just
9 generally so we have it on the record.

10 A. OMNI project is a 25,000-square foot building
11 located in Billings, Montana, subserving musculoskeletal
12 and spine physicians with investors including
13 orthopedics, neurosurgery, anesthesiology, radiology for
14 the care and management of musculoskeletal diseases in
15 the region.

16 Q. And my understanding is the entity we were
17 talking about earlier is ONI Realty Investors, LLC, that
18 owns the OMNI project. Does that sound correct?

19 A. That's correct.

20 Q. Is the OMNI project building completed?

21 A. It is.

22 Q. Is it operational?

23 A. It's functional.

24 Q. Is it occupied?

25 A. No, except for radiology.

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1 Q. I'm going to refer to this other loan as the TI
2 loan. Just to make sure we're talking about it, that's
3 the loan at issue in this lawsuit, and please confirm
4 this is correct: NRNS borrowed money from Wells Fargo to
5 complete space that NRNS was going to occupy in the OMNI
6 project; is that accurate?

7 A. It is.

8 (Deposition Exhibit 3 marked for
9 identification.)

10 Q. (BY MR. BELCHER) Dr. Schneider, the court
11 reporter's handed you what's labeled Exhibit 3. It's a
12 promissory note, and up in the upper right-hand corner,
13 it's dated May 23rd, 2011. I'm going to ask you to take
14 just a second to review that if you would, please.

15 A. I've reviewed it.

16 Q. Did you sign this promissory note?

17 A. I did.

18 Q. And just to be certain, who are the owners of
19 Northern Rockies Neuro-Spine, P.C.

20 A. John H. Schneider, M.D., P.C.

21 Q. Just you?

22 A. Correct.

23 (Deposition Exhibit 4 marked for
24 identification.)

25 Q. (BY MR. BELCHER) Dr. Schneider, the court



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1 Greear, Worland, Wyoming. I apologize, I think I am the
2 trustee of that trust. I stand corrected.

3 Q. Do you know if there are other trustees of that
4 trust?

5 A. I don't believe so.

6 Q. I'd like to talk some about this OMNI project
7 loan. Do you remember when that loan was first discussed
8 with Wells Fargo Bank?

9 A. I believe it was in the early 2009.

10 Q. Can you talk a little bit about the initial
11 discussions for that, I'm going to call it the OMNI loan
12 just to be simple.

13 A. Well, clearly a loan is necessary in order to
14 complete the building construction for the project that
15 we've discussed in Billings, Montana. That project was
16 conceived and spearheaded by myself with several other
17 physicians from Wyoming. It was discussed in its infancy
18 stages with Mr. Ross as president of Wells Fargo, and
19 Mr. Ross offered and requested to look at the project to
20 consider whether Wells Fargo would provide a loan for the
21 development of that project.

22 Q. At the time the original discussions took
23 place, had there been architectural drawings made?

24 A. No, I don't believe so.

25 Q. Okay. But the concept had been determined and



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1 then discussed with the bank, Wells Fargo Bank?

2 A. Correct.

3 Q. Okay. Where did those -- where did that first
4 loan discussion take place? Do you recall?

5 A. Cody, Wyoming, at the Wells Fargo Bank.

6 Q. Was there anyone besides Mr. Ross that were
7 involved in that original discussion with you?

8 A. I don't recall other individuals.

9 Q. Was there anyone besides you that met with
10 Mr. Ross for that first discussion?

11 A. No.

12 Q. Help me, if you will, understand what took
13 place after that before that loan was closed. And so
14 let's talk about, did the bank require that there be
15 architectural drawings?

16 A. Well, in the early stages of the OMNI project,
17 there was more prior to discussion in any detail of the
18 loan since I'm not a builder -- I have no idea what a
19 project like that would require -- conversations with
20 other partners, including Meridian Healthcare, Samples
21 Property, and other physicians interested in the project
22 had occurred. From those conversations, the concept and
23 what would be required was developed. Along the process
24 of that development, because Mr. Ross acted as both a
25 personal and corporate banker, he requested to be kept



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1 informed as to the nature of those conversations and that
2 process. And I had a personal relationship, professional
3 relationship with Mr. Ross so I had no difficulty or
4 hesitation in sharing those early discussions with him.

5 Once the project began to mature, architectural
6 drawings became necessary. After the solicitation of
7 funds for investment in the ONI Realty, which owns the
8 building. I required no assistance in meeting the
9 capital call to become a partner in ONI Realty, and at
10 that point once that ONI Realty partnership was
11 developed, specific conversations about the economic
12 requirements for the entire building took place.

13 Q. Okay. You talked about these partner
14 discussions, and you mentioned various other doctors and
15 entities involved in it. Did they express their interest
16 in participating in this as equity owners?

17 A. Yes.

18 Q. And then was there a determination made as to
19 who was going to put up how much equity capital?

20 A. Yes.

21 Q. And so once that had been formulated, is it
22 fair to say then you went to the second phase of
23 architectural drawings, construction estimates, and
24 things along those lines?

25 A. That's accurate.

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1 Q. Okay. And was that shared with Wells Fargo
2 Bank?

3 A. Yes.

4 Q. Do you recall Wells Fargo Bank's approval
5 process for the OMNI loan?

6 A. Well, I'm not in the banking industry, so I
7 believe they collected what they deemed as necessary
8 information from the various entities and did their own
9 internal assessment. That's as much as I know about
10 their process.

11 Q. Do you know if any of this went to a commercial
12 construction loan department or things along those lines?

13 A. I don't know.

14 Q. Do you know how long the time period was
15 between your first discussion with Wells Fargo Bank in
16 early 2009 and when the OMNI loan closed?

17 A. Well, I know when the OMNI loan closed based
18 upon -- I'm not sure you provided me with those documents
19 in an exhibit. I'd have to look at the closing
20 signatures. I believe conversations were over perhaps a
21 year.

22 Q. Okay. Were loan advances then made on the OMNI
23 loan as construction progressed?

24 A. Yes.

25 Q. In other words, all of the loan proceeds

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1 weren't distributed at the same time?

2 A. Correct.

3 Q. How long did it take to construct the OMNI
4 project from the date the loan closed until it was
5 completed?

6 A. I believe that was 14 months.

7 Q. And what transpired once the OMNI project was
8 completed as it relates to the OMNI loan?

9 A. I believe it was converted to a long-term loan
10 to ONI Realty.

11 Q. And ONI Realty is the owner of the OMNI
12 project, correct?

13 A. Correct.

14 Q. And I think you said that there's only one
15 tenant in the OMNI project, and that's a radiology group;
16 is that accurate?

17 A. That's not accurate. There's -- the OMNI
18 project has tenants in, I believe, 90 percent of the
19 building, including orthopedic surgeons, neurosurgeons, a
20 surgical center, radiology. There's a small bit of white
21 space that's yet to be developed inside the building, but
22 otherwise the rest of the building is leased but just not
23 occupied.

24 Q. Okay. Is the radiology group the only tenant
25 that occupies a portion of the building?

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1 A. The -- again, please define occupied. There
2 every day or -- because I occupy it.

3 Q. Okay.

4 A. Orthopedic occupies it. The surgical center
5 occupies it.

6 Q. Okay. People that are operating a business
7 from that location.

8 A. The -- there are currently no business
9 operations active at that location, but we all -- each of
10 the tenants that I've described have offices and occupy
11 the building.

12 Q. Are any of the tenants providing patient
13 services from that location?

14 A. I don't believe so.

15 Q. Okay. Is the OMNI project listed for sale?

16 A. It is.

17 Q. How long has it been on the market?

18 A. Well, let me retract that yes and say that
19 Samples Property has solicited other potential investors
20 and/or buyers for the project. There are no for sale
21 signs listed, and I'm not sure that it's on the open
22 market.

23 Q. Is the owner of the OMNI project interested in
24 selling the project?

25 A. ONI Realty has expressed interest in selling



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1 the project.

2 Q. Okay. Let's turn to what we've discussed as
3 the TI loan, which is the loan at issue in this
4 litigation. Do you recall when that loan was first
5 discussed with Wells Fargo Bank?

6 A. Well, the nature of the construction -- and
7 this is the first office building I've ever constructed
8 so the concept of a TI loan or tenant improvement costs
9 was delivered from Samples Property, who is the developer
10 of the project. Based upon an individual's desire and
11 result for their office suite, a cost above the
12 construction of their basic suite was necessary, and that
13 is called -- that was ascribed to the cost for tenant
14 improvement above and beyond what the allocation was in
15 the basic building instruction. So sometime after the
16 signature for the overall project occurred and the
17 completion of an individual suite, the tenant
18 improvement -- the tenant improvement requirement was
19 discussed, and since I did not have the capital to pay
20 for that, I discussed with Wells Fargo the need for a
21 tenant improvement loan. And that would have been -- I
22 believe it was perhaps late 2009, maybe early 2010.

23 Q. Let me see if I understand this. So would this
24 be fairly accurate: The OMNI project was actually going
25 to construct the shell of the building and, say, interior

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walls for each tenant, and from that point, it became the tenant's responsibility to finish their space; is that a fairly accurate summary?

4 MR. CLARK: Objection, compound question.

5 A. The tenant improvement, the requirement of the
6 developer and builder was to allocate a certain amount of
7 money per square foot to create that shell, but it was
8 more than a shell. There was potentially finish on the
9 walls, carpet on the ground based upon the number that
10 they allocated to the individual, and I think that was
11 \$45 per square foot. The decisions above that for the
12 particular suite as to how the physician or the surgery
13 center or the radiology group wanted to finish out their
14 lease space then created the need for capital for tenant
15 improvements. From that the tenant improvement loan was
16 procured from Northern Rockies Neuro-Spine from Wells
17 Fargo.

18 Q. (BY MR. BELCHER) Thank you. So let's go to
19 your recollection of that first discussion about the TI
20 loan. Do you recall where that discussion took place?

21 A. Would have been in Glenn Ross's office in Cody,
22 Wyoming.

23 Q. Do you recall who all was in attendance for
24 that first discussion?

A. I believe at that point, Mr. Ross was working

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1 closely with Derek Moore who took point on much of the
2 project for Wells Fargo. So I believe Mr. Moore was,
3 myself and Mr. Ross were in attendance.

4 Q. Just the three of you?

5 A. I believe so.

6 Q. Can you tell us what you recall from that
7 discussion.

8 A. Well, my intent is in projecting what I am able
9 to do relative to the overall project beyond the
10 building; that is, hiring additional staff, expanding
11 outreach clinics, et cetera, is to look for the most
12 stable long-term debt relationship that I would have with
13 whatever entity I was borrowing. So my conversations
14 with Mr. Ross and Mr. Moore were to meet the needs of
15 this tenant improvement loan that I acquired and to do so
16 in the most stable commercial loan setting so that I
17 could predict what my long-term costs of that loan would
18 be relative to the Northern Rockies Neuro-Spine cash
19 flow.

20 Q. So what did you tell them at that first
21 meeting?

22 A. I will need money but we don't know how much to
23 complete my suite that Northern Rockies Neuro-Spine has
24 signed a lease for, and I will need that -- and I would
25 like that loan to be a long-term loan so that I can

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1 project what my monthly capital -- what my monthly
2 expenditures for Northern Rockies Neuro-Spine will be in
3 addition to the other expenses, such as the lease.

4 Q. Do you recall anything else in that initial
5 discussion beyond the fact that you were going to need
6 money for tenant improvements and that you were
7 interested in a long-term loan?

8 A. I don't recall.

9 Q. You've mentioned Glenn Ross and Derek Moore.
10 Do you recall having any discussions with any other Wells
11 Fargo Bank representatives regarding the TI loan before
12 it closed at any time?

13 A. Please clarify closure of a loan. Is that when
14 we sign, or is that when the loan is -- when the loan
15 term is complete?

16 Q. When you signed papers and delivered them to
17 Wells Fargo Bank.

18 A. I believe that Derek Moore and Mr. Ross were
19 the only people I had a conversation with.

20 Q. Okay. Are you familiar with the internal loan
21 approval process of Wells Fargo in approving the TI loan?

22 A. Very peripherally.

23 Q. Can you tell us peripherally what you
24 understood was required.

25 A. Well, my understanding is only based upon the

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1 documents provided in this litigation that I reviewed
2 that were generated from the commercial lender prior to
3 this deposition. Mechanics of what they do to approve, I
4 do not know other than requesting a list of what my
5 assets and liability are, like any loan.

6 Q. Now, my understanding is that you claimed that
7 Wells Fargo promised it would convert the TI loan to a
8 long-term loan at maturity; is that correct?

9 A. Correct.

10 Q. Can you tell me every person that made that
11 promise to you.

12 A. Glenn Ross made that promise, and Mr. Moore, I
13 believe, was present during those conversations in which
14 I expressed a desire in the inception of the loan to have
15 a long-term loan, not one that would change. I look at
16 it no different than a housing -- if I were to take a
17 mortgage out on a house, I would not do an ARM. I would
18 not do a mortgage that had an ARM associated with it.
19 It's just too -- the potential rates I would rather know
20 and have a long-term loan set up at its inception so I
21 know what my costs will be on month one, month 12, month
22 20. And so the conversations and my expressed desire was
23 to have a long-term loan in its inception. Mr. Ross,
24 however, indicated that it was necessary to have a
25 construction loan that would mature in a year, and then a

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1 long-term loan would be granted at that time to convert
2 whatever the debt was. We didn't know what the debt
3 would be. We didn't know how much it would actually cost
4 to complete the tenant improvements. So that amount at
5 the anniversary of or the completion of that construction
6 loan would convert to a long-term loan similar to what
7 ONI Realty was doing for the overall building.

8 Q. Let me make sure I understand this. Glenn Ross
9 was the only one that promised you that it would be
10 converted to a long-term loan; is that correct?

11 A. Well, Glenn Ross is the only person that had
12 the authority to do that. Mr. Moore worked for Glenn
13 Ross and was present in those conversations.

14 Q. Mr. Moore was present in those conversations,
15 but he did not make that promise; is that correct?

16 A. I don't recall a specific conversation where he
17 made that promise.

18 Q. Okay. Do you recall when that promise of a
19 long-term loan was first made to you?

20 A. The inception of the conversation about the TI
21 loan in its inception, as I discussed with Mr. Ross, my
22 desire was to have a fixed monthly expense long-term for
23 the tenant improvements, long-term being that
24 10-to-15-year commercial loan.

25 Q. So at the time you first inquired about the TI

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1 loan, is it my understanding that Mr. Ross promised at
2 the time in, I believe you said, late 2009 or early 2010
3 that a loan like the TI loan would be converted to a
4 long-term loan?

5 A. Correct. That the TI loan -- Mr. Ross
6 indicated that the best option for me was to have a
7 one-year construction loan for tenant improvements. And
8 at the term of that loan, it would be converted --
9 whatever that debt was would be converted to a note that
10 would be 10 to 15 years based -- similar to what ONI
11 Realty was doing for the overall construction of the
12 building and its conversion to a long-term note.

13 Q. In looking at the allegations in this
14 litigation, apparently there was a meeting that took
15 place on April 24th, 2011. Do you recall that meeting?

16 A. I had many meetings with Mr. Ross, and I don't
17 recall that specific date. But I'm sure I'll be able to
18 answer your question.

19 Q. Okay. Well, I want to ask you if the
20 allegations in your pleadings in this case are accurate
21 to the best of your knowledge.

22 A. They are.

23 Q. Okay. So just so I can tell you the questions
24 I'm going to ask, the allegations are that a meeting took
25 place on April 24th, 2011, another meeting took place on

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1 May 18th, 2011, and another meeting took place May 19th,
2 2011. So I want to ask you about those three meetings.

3 A. All right.

4 Q. Do you recall at the April 24th, 2000 [sic]
5 meeting who was in attendance?

6 A. Mr. Ross and I believe -- I believe only
7 Mr. Ross.

8 Q. Do you recall in that meeting what Mr. Ross
9 said to you about a long-term loan for the TI loan?

10 A. Nature of our conversation about long-term loan
11 was at the inception and the request of the loan, and
12 Mr. Ross had indicated that it was not in my best
13 interests to have this loan as a long-term loan; that a
14 construction loan maturing in a year was the only option,
15 and that it would be converted to a long-term loan at the
16 term of the construction loan. After those
17 conversations, I did not have repeat conversations with
18 Mr. Ross about that particular fact. I had many meetings
19 with Mr. Ross discussing the development of the project,
20 seemed to be a construction delay associated with the
21 project, and I had ongoing assumption that my loan would
22 be converted to a long-term loan similar to the ONI
23 Realty long-term loan for the overall building.

24 Q. So you don't recall that he repeated these
25 promises to convert this to a long-term loan at every

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1 meeting that you had regarding the OMNI project?

2 A. Oh, I'm sure we didn't bring that topic up
3 every time we met.

4 Q. Okay. You mentioned that Mr. Ross told you
5 that it was in your best interests to have a one-year --
6 or I'm going to call it a one-year construction loan, a
7 short-term construction loan for the TI loan; is that
8 correct?

9 A. Correct.

10 Q. Why -- why did he explain to you that was in
11 your best interests?

12 A. I had -- as I indicated, I'd had a long-term
13 relationship with Mr. Ross, and at his introduction with
14 other members of the Wells Fargo team, such as wealth
15 management, over the course of time much like a
16 doctor-patient relationship, he developed an implicit
17 trust in the person you're doing business with. And
18 Mr. Ross is a banker who I believe had my best interests
19 at heart relative to what I was trying to do both
20 personally and as well as professionally. So if Mr. Ross
21 had indicated that the best available or the only
22 available options to me were this one-year note that
23 would convert at the completion of the loan to a
24 long-term note, I took him at his word. I didn't
25 question percentage rates and differentials. I trusted



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1 loan with Mr. Ross at your ranch in Powell?

2 A. The conversations for overall construction and
3 specifically the needs for TI loans were discussed at
4 that meeting because Mr. -- Samples Property, Mark
5 Samples from Samples Property who was the developer for
6 which he presented not only the overall cost of the
7 project but what would be required of the individuals who
8 are leasing suite space, and Mr. Ross was in attendance.
9 So the concept of a TI loan or concept of the need for TI
10 money was discussed during that meeting.

11 Q. But not specifically the NRNS TI loan; is that
12 correct?

13 A. Correct.

14 Q. This is going to be redundant, but I need to
15 ask these questions. So let's move to May 18th, 2011.
16 Do you recall who's in attendance at this meeting?

17 A. Mr. Ross was in attendance to that meeting, and
18 at some point Mr. Moore was no longer employed by Wells
19 Fargo. And I believe Liz Romine and Holly Moen, two
20 other employees at Wells Fargo, participated in the
21 meeting in question.

22 Q. Do you recall any specific discussion about
23 conversion of the TI loan to a long-term loan in the May
24 18th, 2011 meeting?

25 A. I don't recall specifically discussing that

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1 topic.

2 Q. Do you recall where the May 18th, 2011 meeting
3 took place?

4 A. Cody, Wyoming, Wells Fargo Bank.

5 Q. I'm going to ask you about the next day, which
6 is May 19th, 2011. Do you recall who was in attendance
7 at that meeting?

8 A. I recall Mr. Ross. I do not recall his -- if
9 any of his subordinates were there.

10 Q. Was anyone else there on behalf of NRNS besides
11 you?

12 A. No.

13 Q. Did Mr. Ross discuss converting the TI loan to
14 a long-term loan at the May 19th, 2011 meeting?

15 A. I don't recall the specific conversation;
16 though, Mr. Ross had the concept of overall project and
17 my specific economic needs, and the -- there was
18 conversation relative to what my long-term loan repayment
19 requirements would be relative to other business ventures
20 that I had that Wells Fargo was interested.

21 Q. So do I understand that to mean you talked
22 about sort of your financial condition overall at this
23 May 19th meeting?

24 A. Relative to what my anticipated costs would be
25 for this and other projects.

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1 Q. Okay. But there was no specific discussion
2 about converting the TI loan to a long-term loan?

3 A. It was intrinsically assumed that that would
4 occur based upon Mr. Ross's previous representations.

5 Q. Now the TI loan closed -- well, the note's
6 dated May 23rd, 2011, so when I use that as the closing
7 date, that's what I mean. Do you recall whether you
8 appeared at Wells Fargo Bank in person to deliver the
9 documents?

10 A. I believe that the documents were there, and I
11 came into Wells Fargo to sign the documents.

12 Q. So once the documents were signed, can you tell
13 us sort of in summary fashion how loan advances were made
14 on the TI loan.

15 A. Well, Mr. Ross -- the length of the building
16 project took longer than had been represented by the
17 builder and developer.

18 Q. Can I stop for a second.

19 A. Sure.

20 Q. Just to clarify that, is the building project
21 the OMNI project itself and not the TI loan, not the
22 tenant improvements?

23 A. Well, the economic draw was simultaneous. So
24 the project was being developed, and at a certain point
25 in time -- perhaps it was six months in the project --

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1 actually deferred that to Liz Romine and Mr. Ross, who
2 had indicated, I believe, that there was a -- they had an
3 inspector, that the bank had an inspector that would go
4 in and make sure that work -- I don't know who that was
5 but make sure the work was done as the building and
6 specifically my tenant improvements matured during the
7 project development.

8 Q. So on the TI loan, were loan advances made as
9 certain phases of the tenant improvement was completed?

10 A. I believe so, yes.

11 Q. Did Wells Fargo make all the loan advances that
12 were necessary, requested by NRNS to complete the tenant
13 improvement?

14 A. Yes.

15 Q. Do you know when the tenant improvements for
16 NRNS were completed approximately?

17 A. I believe we moved in from our other location
18 in Billings in October -- I think it was September,
19 perhaps mid-September of 2011.

20 Q. So how long -- so if this note is dated May
21 23rd of 2011, did it only take three or four months to
22 complete the tenant improvements?

23 A. That would be -- I guess that would be
24 accurate.

25 Q. Wells Fargo advised you in May of 2012 it would

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1 (Discussion off the record.)

2 MR. BELCHER: Back on the record.

3 Q. (BY MR. BELCHER) Dr. Schneider, I'd like to
4 ask you some questions about Dr. Jimmie Biles. Who is
5 Dr. Biles?

6 A. On advice of Counsel, I'm invoking my Fifth
7 Amendment of the United States and decline to answer.

8 Q. Let me just clarify that for simplicity. If I
9 ask you any questions about Dr. Biles or payments that
10 were made to Dr. Biles to settle a lawsuit, will I be
11 receiving the same response from you that you will not
12 answer because you're invoking your Fifth Amendment
13 rights?

14 A. I will.

15 Q. Okay.

16 (Deposition Exhibit 8 marked for
17 identification.)

18 Q. (BY MR. BELCHER) Dr. Schneider, I've handed
19 you or the court reporter has handed you an exhibit that
20 consists of published materials from newspapers regarding
21 various allegations. I'm going to ask you to take a
22 minute to look at that.

23 A. I've looked at it.

24 Q. The first reported document at the top is dated
25 February 1st of 2012, and my reading of this is that the

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1 Wyoming Board of Medicine temporarily suspended your
2 license, and I'm just going to ask you a few questions
3 about that. Did you have your license suspended in the
4 first part of 2012?

5 A. I did.

6 Q. And how long -- were you prevented from
7 performing surgery as a result of that suspension?

8 A. I was.

9 Q. And how long did that keep you from performing
10 surgery?

11 A. Five weeks.

12 Q. Did that have a financial effect on NRNS?

13 A. It did.

14 Q. What was the effect of that?

15 A. Decreased revenue from the -- that five-week
16 period.

17 Q. Do you know how much revenue NRNS lost as a
18 result of your license being suspended for that five-week
19 period?

20 A. I believe we answered that in an interrogatory,
21 and I'd like to refer to that interrogatory.

22 Q. That's fine.

23 MR. CLARK: I'm not seeing the specific
24 one, John.

25 THE DEPONENT: Perhaps it was an answer

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1 to production.

2 A. I believe we calculated that at 160,000 in one
3 of the answers to one of the interrogatories, but --

4 MR. BELCHER: Look at interrogatory
5 number 26. This is NRNS.

6 MR. CLARK: Oh, yeah. There you go. I
7 knew it was there, I just couldn't find it.

8 A. The calculated loss is \$168,900.

9 Q. (BY MR. BELCHER) Do you know how that loss was
10 calculated?

11 A. I do. The projection -- since my surgical
12 bookings are six to eight weeks out, I had people on the
13 OR schedule when that -- and my OR schedule was booked
14 for the month of January and most of February or all of
15 February, I believe, when the suspension -- when I was
16 notified of the suspension on a Saturday night. And so
17 we could calculate what the anticipated net revenue would
18 have been from those surgical procedures based upon
19 historical performance.

20 Q. So about a little over \$30,000 a week; is that
21 correct?

22 A. That would be correct.

23 Q. Okay. And after the suspension, your license
24 to practice in Wyoming was reinstated, right?

25 A. Correct.

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7 Q. Let me go back to Exhibit 8, and it's the last
8 two pages. And this appears to be a report of a lawsuit
9 filed by the estate of Russell Monaco that was just
10 recently filed. Are you aware of this lawsuit?

11 A. I have not been served on this lawsuit.

12 Q. This makes reference to his -- the death of
13 Russell Monaco in late 2011. Is his death related to the
14 matter that resulted in the temporary suspension of your
15 license by the Wyoming medical authorities?

16 A. Yes.

17 Q. Okay. At the time that your license was
18 suspended, had the family of Russell Monaco made any
19 claims against you?

20 A. No.

21 Q. I'm going to ask you to explain the damages
22 that Northern Rockies Neuro-Spine claims it suffered as a
23 result of Wells Fargo Bank refusal to convert the TI loan
24 to a long-term loan. Can you explain the time period in
25 which the damages occurred.

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1 A. Well, based upon the economic projections of
2 Northern Rockies Neuro-Spine with a full staff --
3 including midlevels, highly compensated personnel, and
4 other employed physicians -- the economic projections of
5 Northern Rockies Neuro-Spine to meet its monthly debts
6 had been calculated. That calculation was based upon an
7 anticipation that the TI, the outstanding principal
8 amount for the TI loan would be converted into a 15-year
9 note. When that didn't occur, it became necessary to
10 look at the tactical daily operations of Northern Rockies
11 Neuro-Spine to be able to meet the debt, the monthly debt
12 of running that operation. So it was necessary to
13 terminate key individuals that were an integral part of
14 the ability to run that organization anticipating that I
15 would need to amass moneys to try to meet an obligation
16 that I clearly wasn't expecting.

17 Q. So how much did you calculate the monthly
18 payment would be on the TI loan?

19 A. I don't recall the specific calculation. We
20 anticipated the principal amount with a reasonable five
21 percent interest rate over 15 years, I believe. At the
22 time that was the calculation that I was anticipating in
23 my conversations with Mr. Ross at the end of 2011.

24 Q. Do you know the principal amount that you used?

25 A. The -- I believe it was \$550,000.

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1 Q. And as I understand it, your claim is that
2 Wells Fargo's unwillingness to convert this to a
3 long-term loan caused 25 percent of the loss of revenues
4 by Northern Rockies Neuro-Spine; is that correct?

5 A. That's correct.

6 Q. And the total amount of lost revenues is
7 \$2,326,018.67; is that correct?

8 A. Correct.

9 Q. Where did that number come from?

10 A. We looked at the profit and loss statements of
11 2010, 2011, 2012.

12 Q. And what -- when you say "we," who worked with
13 you in coming up with this information?

14 A. My representative attorney and -- well, my
15 representative attorney.

16 Q. And so tell me what factor you arrived at to
17 come up with \$2,326,018.67.

18 A. Well, that was -- I do not believe that's the
19 claim -- our claim against Wells Fargo is 25 percent of
20 that number, not that entire number.

21 Q. Right.

22 A. And that's based upon the diminished revenues
23 which can be directly related to the need to constrict
24 access to my practice based upon the termination of
25 employed physicians under Northern Rockies Neuro-Spine as

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1 well as employed midlevels -- putting a physician
2 assistant and nurse practitioner -- that occurred as a
3 result of the constriction of the practice and the
4 practice expenses in an attempt to meet the debt that
5 Mr. Ross thrust upon me over a very short period of time.

6 Q. I understand that apparently there were lost
7 revenues because people that could perform services were
8 not employed; is that correct?

9 A. Correct.

10 Q. I'm trying to arrive at -- you said that you
11 looked at 2010, 2011, and 2012 revenue figures?

12 A. Correct.

13 Q. And I'm trying to determine how those came into
14 play.

15 A. Well, I have the impact of failure to convert
16 the TI loan to a long-term loan and the requested
17 repayment or the demand for repayment of \$550,000, more
18 or less, from Wells Fargo. That became a line item
19 expense from Northern Rockies Neuro-Spine, and so to
20 attempt to -- I don't keep \$550,000 in my accounts
21 receivable to be pulled off in a moment's notice. So
22 anticipating the need to collect that amount of money was
23 necessary to terminate physicians, midlevels, who would
24 generate income during that timeframe. So I can look at
25 the -- I can look at the profit and loss statement from

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1 2012 when I had lost these individuals who were revenue
2 generating sources for Northern Rockies Neuro-Spine and
3 compare that to 2011. The reduction of net revenues --
4 excuse me, the reduction of gross revenues is the
5 denominator -- the -- excuse me, the numerator. The
6 denominator is the impact that those individuals who were
7 revenue generators who are no longer a part of my
8 practice as a direct result of me needing to constrict
9 the practice to meet the debt obligation, and that
10 includes one individual who is not a revenue generator,
11 Theresa Trier who was the operational manager for
12 Northern Rockies Neuro-Spine who took a 75 percent pay
13 cut for four months and decided that she had better
14 opportunities elsewhere and left. So the infrastructure
15 of management as well as other providers during that
16 timeframe created a diminishing revenues that we
17 calculated at 25 percent of the overall decline in gross
18 revenues.

19 Q. So who were the revenue generators that did not
20 generate revenues under your damages calculation?

21 A. I had physician assistant Harley Morrell. I
22 had nurse practitioner Bob Gantz, G-A-N-T-Z. I had
23 employed an internal medicine physician, I'm actually
24 blinking her name, all of which were generating revenues
25 for Northern Rockies Neuro-Spine outside of John H.

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1 Schneider, M.D. I was the other revenue generator.

2 Q. So they would have generated revenues for
3 Northern Rockies Neuro-Spine, and after paying whatever
4 compensation they were entitled to, there'd be lost
5 profits; is that correct?

6 A. Correct, but they were terminated.

7 Q. Right. But as a result of -- so I'm trying to
8 arrive at this \$2,326,000 figure. Is that lost profit?
9 That's the 100 percent lost revenues.

10 A. Right.

11 Q. Is that lost profit?

12 A. That's lost gross.

13 Q. Okay. So that's before deducting any costs
14 attributable to these revenue providers?

15 A. Correct.

16 Q. That had left, correct?

17 A. Correct.

18 Q. So what percentage of that \$2,326,000 figure
19 would be profit that NRNS lost?

20 A. Well, our overhead was -- I mean, the
21 historical overhead for the practice is the only way I
22 can answer that, and it ran between 32, 33 percent.

23 Q. But you agree, don't you, as a result of these
24 revenue producers not being employed NRNS also saved
25 expenses, correct?

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1 A. Correct.

2 Q. Now, my understanding is you attribute 25
3 percent of that loss to Wells Fargo's refusal to convert
4 the TI loan to a long-term loan. How did you arrive at
5 that 25 percent figure?

6 A. The figure was based upon the impact of
7 terminating revenue generators and the attrition of key
8 critical management personnel for the strategic
9 operations of Northern Rockies Neuro-Spine, and so 75
10 percent of the loss is not related to Wells Fargo failure
11 to convert the TI loan. And we estimated 25 percent is.

12 Q. So help me understand the 75 percent. What
13 contributed to the 75 percent loss from other factors?

14 A. Well, the loss of key personnel and the loss of
15 a strategic business manager was not -- has an impact on
16 the overall practice beyond just the economics of the
17 Wells Fargo note, not being able to generate income at
18 the OMNI center because the surgery center failed to
19 open. That's a significant loss of revenues anticipated
20 for Northern Rockies Neuro-Spine. The 25 percent decline
21 in the overall practice as I previously -- 23 percent
22 decline in the overall practice I had previously noted
23 had that impact on that \$2,000,000 as well.

24 Q. So there were other factors besides Wells
25 Fargo's unwillingness to convert this to a long-term loan

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1 that contributed to lost revenues to Northern Rockies
2 Neuro-Spine; is that correct?

3 A. For which we've ascribed 75 percent of the lost
4 revenues to those other factors.

5 Q. Right. I want you to -- I want to ask about
6 what are the details behind that 75 percent. What goes
7 into the 75 percent?

8 A. Well, the revenue generated by the individuals
9 that are no longer with the practice, the strategic
10 manager of the practice with key personnel, that goes
11 into the 75 percent. The lack of the surgery center
12 opening, as I indicated, the 20 to 30 percent drop in
13 revenues relative to bad press, that goes into the
14 overall number and is apportioned based upon our
15 guesstimation of the impact of those specific economic
16 demands or events on the bottom line.

17 Q. You mentioned looking at revenues for Northern
18 Rockies Neuro-Spine for years 2010, 2011, and 2012 in
19 arriving at this; is that correct?

20 A. Correct.

21 Q. What were the revenues of Northern Rockies
22 Neuro-Spine in 2010?

23 A. 5,000,000-some-odd dollars.

24 Q. Do you recall what they were in 2011?

25 A. I believe it was somewhere between four and a

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1 half and 5,000,000.

2 Q. And how about 2012?

3 A. Just under 3,000,000 gross. These are gross
4 numbers.

5 Q. Right. What steps did Northern Rockies
6 Neuro-Spine take to attempt to borrow money elsewhere to
7 pay off Wells Fargo Bank?

8 A. I talked with previous lender Western Security
9 who holds the note for the TI improvements on the surgery
10 center, and they weren't interested in lending any money
11 that had to do with the OMNI center project.

12 Q. Did you check with anyone else?

13 A. I did not.

14 Q. Now, Northern Rockies Neuro-Spine never made
15 any payments on the TI loan after it received the May
16 2012 letter; isn't that correct?

17 A. I believe that's correct.

18 Q. Wells Fargo Bank never applied any of the
19 accounts receivable that secured that loan to reduce the
20 loan; isn't that correct?

21 A. I believe that's correct.

22 Q. So Northern Rockies Neuro-Spine had the
23 availability of all of the accounts receivable since May
24 of 2012, correct?

25 A. That's -- Northern Rockies Neuro-Spine has

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1 other debt obligations, but, yes, that's correct.

2 Q. But it's had Wells Fargo's collateral to use
3 for its business operations, correct?

4 A. Correct.

5 Q. Wells Fargo's never notified anybody that owed
6 money to Northern Rockies Neuro-Spine to send money to
7 Wells Fargo, correct?

8 A. Not to my knowledge.

9 Q. To your knowledge they have not -- Wells Fargo
10 has not asked anyone to remit payment to Wells Fargo,
11 correct?

12 A. Other than Northern Rockies Neuro-Spine?

13 Q. Right.

14 A. Correct.

15 (Deposition Exhibit 9 marked for
16 identification.)

17 Q. (BY MR. BELCHER) Dr. Schneider, I've handed
18 you what's labeled or asked the court reporter to hand
19 you what's labeled Exhibit 9. I'm going to ask you to
20 take a minute to look at that, if you would, please.

21 A. I've looked at it.

22 Q. Do you recall sending this e-mail to Glenn
23 Ross?

24 A. I do.

25 Q. Now, my understanding is that you were asking



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1 Wells Fargo to loan Northern Rockies Neuro-Spine
2 \$3,000,000 to be paid out over seven years; is that a
3 correct understanding?

4 A. Correct.

5 Q. And as I understand it, you were offering to
6 secure that loan with \$3,000,000 of deposits owned by
7 Northern Rockies Insurance; is that also correct?

8 A. Correct.

9 Q. I'm going to ask you to explain what you meant
10 by, to meet credentialing criteria you cannot show that
11 the 3,000,000 is assigned elsewhere. What does that
12 mean?

13 A. Well, at the time I was credentialed at West
14 Park Hospital in Cody, Wyoming, and West Park Hospital is
15 part of their credentialing required insurance as they do
16 of every physician, insurance verification. Northern
17 Rockies Insurance Company was not allowed to have a lien
18 placed on it by any debtor in order to maintain my
19 credentials at West Park Hospital. So if I were to use
20 Northern Rockies Insurance Company moneys to
21 collateralize a debt, then there could not be a lien on
22 that debt or else my credentials -- I would have to
23 report that, and I couldn't be credentialed at that
24 institution. So not being a banker, it's in this -- and
25 this e-mail came after lengthy conversations with

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1 Mr. Ross about us trying to increase my economic position
2 for retirement investment at the time. So the -- if I
3 were to sign for this debt, I would have -- I could show
4 that it was collateralized by Northern Rockies Insurance
5 Company money, but I could not have a lien placed upon
6 that. So that's what I was looking to.

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